

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. CV 11-01281 HRL	DATE FILED 3/16/2011	U.S. DISTRICT COURT 280 South First Street, Rm 2112, San Jose, CA 95113
PLAINTIFF SIMPLYSHE INC		DEFENDANT BASE4 GROUP INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,773,495		SEE ATTACHED COMPLAINT
2 3,607,513		
3 3,761,547		
4 3,545,878		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK Betty Walton	DATE March 18, 2011
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

HRL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV11 1281

Case No.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION**

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiff
SIMPLYSHE, INC.

SIMPLYSHE, INC.,
a Delaware corporation,

Plaintiff,

vs.

BASE4 GROUP, INC.,
a Texas Corporation

Defendant.

Plaintiff SimplyShe, Inc. complains against Base4 Group, Inc. as follows:

THE PARTIES

1. Plaintiff SimplyShe, Inc. ("SimplyShe") is a Delaware corporation, having a principal place of business at 149 New Montgomery Street, Fourth Floor, San Francisco, California 94105.

2. Upon information and belief, Base4 Group, Inc. ("Base4") is a Texas corporation with its principal place of business at 2611 Westgrove Drive, Suite 109, Carrollton, Texas 75006-3322.

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JURISDICTION AND VENUE

3. This Court has jurisdiction of this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338(a) and 1338(b), in that this case arises under the Trademark Laws of the United States, 15 U.S.C. §1051 et seq.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Base4 transacts business in this district and because a substantial part of the events giving rise to the claims asserted herein arose in this district.

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INTRADISTRICT ASSIGNMENT

5. Since this is an Intellectual Property Action, the matter is subject to district-wide assignment under Civil L.R. 3-2(c).

FIRST COUNT
Federal Trademark Infringement
(15 U.S.C. § 1114(a); Lanham Act § 32)

6. SimplyShe is the owner of several "SIMPLY-" formative trademarks, including SIMPLYSHE, SIMPLYDOG, SIMPLYCAT, and SIMPLYWEE (collectively, the "SimplyShe Trademarks"). SimplyShe has continuously used the mark SIMPLYWEE in interstate commerce in connection with baby and children's clothing since at least as early as February 2003. SimplyShe has continuously used the marks SIMPLYSHE and SIMPLYDOG in interstate commerce with pet clothing and specialty pet supplies since at least as early as July 2004. SimplyShe has continuously used the mark SIMPLYCAT in interstate commerce with pet jewelry since at least as early as November 2008.

7. The following SimplyShe Trademarks are registered in the United States Patent and Trademark Office:

<u>Registration No.</u>	<u>Registration Date</u>	<u>Mark</u>
3,773,495	April 6, 2010	SIMPLYCAT
3,607,513	April 14, 2009	SIMPLYDOG
3,761,547	March 16, 2010	SIMPLYDOG (and Design)
3,545,878	December 16, 2008	SIMPLYWEE (and Design)

Copies of the registration certificates referenced in Paragraph 6 are attached hereto. (Exhibit A.)

1 8. Since SimplyShe began using its family of SimplyShe Trademarks, they have become
2 widely known by consumers. SimplyShe has devoted substantial time, money and effort to establish and
3 maintain the quality of specialty pet clothing and products associated with the SimplyShe Trademarks.

4 9. SimplyShe has spent substantial money in advertising and otherwise promoting the
5 products associated with the SimplyShe Trademarks. As a result, SimplyShe has established valuable
6 goodwill in its business and in its SimplyShe Trademarks, which have been favorably received by the
7 public.

8 10. On information and belief, Base4 registered the domain name "simplyfetching.com" on
9 June 9, 2008, and has been continuously operating a website at that domain in connection with sales of
10 dog clothing. A copy of the domain name registration particulars as shown in the records for the Internet
11 Corporation for Assigned Names and Numbers (ICANN) WHOIS database is attached as Exhibit B.

12 11. Base4 has adopted and is using the designation SIMPLY FETCHING in connection with
13 the sale of dog clothing. The acts of infringement by Base4 have been committed with the intent to
14 cause confusion, mistake and to deceive. Such acts of infringement are in violation of 15 U.S.C. §
15 1114(a).

16 12. On information and belief, Base4 had knowledge of SimplyShe's use of the SimplyShe
17 Trademarks for its pet clothing and supplies well prior to Base4's adoption and use of the SIMPLY
18 FETCHING designation on June 9, 2008.

19 13. On January 31, 2011, SimplyShe sent a cease and desist letter to Base4 regarding Base4's
20 use of the designation SIMPLY FETCHING. In its January 31 letter, SimplyShe informed Base4 of its
21 superior trademark rights and demanded that Base4 stop using the designation SIMPLY FETCHING
22 with pet clothing. On February 10, 2011, Base4 responded to SimplyShe's letter by refusing to comply
23 with SimplyShe's demands and refusing to cease its use of SIMPLY FETCHING. To date, Base4
24 continues to use the designation SIMPLY FETCHING in connection with dog clothing.

25 14. By reason of Base4's acts as alleged herein, SimplyShe has suffered and will continue to
26 suffer damage to its business, reputation and goodwill and the loss of sales and profits SimplyShe would
27 have made but for Base4's acts.
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1 15. Base4 threatens to continue the acts complained of herein, and unless restrained and
2 enjoined, will continue to do so, all to SimplyShe's irreparable damage. It would be difficult to ascertain
3 the amount of compensation that could afford SimplyShe adequate relief for such continuing acts, and a
4 multiplicity of judicial proceedings would be required. SimplyShe's remedy at law is not adequate to
5 compensate it for injuries threatened.

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7 **SECOND COUNT**
8 **Federal Unfair Competition**
9 **(15 U.S.C. § 1125(a); Lanham Act § 43(a))**

10 16. Plaintiff SimplyShe hereby incorporates by reference, as if fully set forth herein, the
11 allegations of paragraphs 1-15 above.

12 17. The acts of Base4 constitute unfair competition and infringement of SimplyShe's
13 common law rights in the SimplyShe Trademarks.

14 18. Base4 has infringed the SimplyShe Trademarks as alleged herein with the intent to
15 deceive the public into believing that products provided by Base4 are made by, approved by, sponsored
16 by or affiliated with SimplyShe. Base4's acts as alleged herein were committed with the intent to pass
17 off and palm off Base4's products as the products of SimplyShe, and with the intent to deceive and to
18 defraud the public.

19 19. Base4's actions have been damaged, and unless enjoined, will continue to damage
20 SimplyShe's business, reputation and attendant goodwill in an amount to be determined at trial.
21 SimplyShe has no adequate remedy at law.

22 **THIRD COUNT**
23 **Unfair Competition Under**
24 **California Business & Professions Code §§ 17200 et seq.**

25 20. Plaintiff hereby incorporates by reference, as if fully set forth herein, the allegations of
26 paragraphs 1-19 above.

27 21. The aforementioned acts of Base4 constitute unfair competition under California
28 Business & Professions Code §§ 17200 et seq.

22. Base4's actions have damaged, and unless enjoined, will continue to damage plaintiff's business, reputation and attendant goodwill. SimplyShe has no adequate remedy at law.

FOURTH COUNT
Unfair Competition Under California State Law

23. Plaintiff hereby incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1-22 above.

24. The aforementioned acts of Base4 constitute unfair competition under the common law of the State of California.

25. Base4's actions have damaged, and unless enjoined, will continue to damage plaintiff's business, reputation and attendant goodwill. SimplyShe has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff SimplyShe prays for a judgment against Base4 as follows:

A. That Base4 be enjoined from using the designation SIMPLY FETCHING, or any other "SIMPLY-formative" designation, in connection with the sale of pet clothing, pet jewelry, and related specialty pet supplies;

B. That SimplyShe be awarded Base4's profits and all damages sustained by SimplyShe by reason of the infringement by Base4 and that such damages or profits, whichever is greater, be trebled under 15 U.S.C. § 1117(b) due to the willful and deliberate character of this infringement;

C. That this case be declared exceptional and SimplyShe be awarded its costs, expenses and attorneys fees incurred in connection with this action under 15 U.S.C. § 1117(a);

D. For an award of prejudgment interest on the above damages award; and

E. That SimplyShe be awarded such further relief as the Court deems just and proper.

Dated: March 16, 2011

DERGOSITS & NOAH LLP

By: 

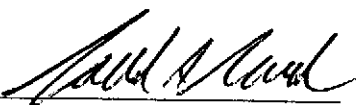
Todd A. Noah
Attorneys for Plaintiff
SIMPLYSHE, INC.

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3 **DEMAND FOR JURY TRIAL**

4 Plaintiff SimplyShe, Inc. hereby requests a jury trial on all issues set forth herein.

5 Dated: March 16, 2011

6 DERGOSITS & NOAH LLP

7 By: 
8 Todd A. Noah
9 Attorneys for Plaintiff
10 SIMPLYSHE, INC.
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